IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 13 of 2005

STATE & ORS
V/S
KANHAIYALAL & ORS

Ms. VIDYA BORA, ASTT.G.A., for the petitioner

Date of Order : 17.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, and perused the impugned orders.

The learned District Judge has discussed the matter in detail, and has found that vide order of the Court dated 14.7.2004, an officer was appointed to look into the matter, and submit the report. Accordingly, on 20.8.2004, the inquiry report was submitted, according to which, the total area of the school-building is 17500 sq.ft., it is two storied building, each floor having 4285 sq.ft. of land, and on the ground floor 361 sq.ft. area is used for construction of toilets, it is surrounded by some boundary walls, doors & windows are there, and water-course for drainage is duly constructed, electricity and water arrangements were also there, it is located in the inhabited area, and there is no dirt around.

Thus, it has been found that the only thing required to be done, is execution of the gift-deed, so as to transfer the title to the Education Department, and the department vacating the old school, and shifting to the new building. According to the valuation report of P.W.D, the cost of the building is Rs.16,92,000/-, while according to the understanding, it was not required to be less than Rs.9 lakhs. Thus, the learned District Judge has found that all requisites are complete, and has directed that the gift-deed be executed, and got registered, and possession of the new building be delivered to the appellant before 22.11.2004, and the appellant is directed to get the gift deed executed before that date, and immediately thereafter to hand over the old premises to the plaintiff.

In my view, the findings are pure findings of fact, and in the revisional jurisdiction, the judgment-debtor cannot be allowed to raise grievance on factual aspects by seeking to contend that the report submitted pursuant to the executing Court's order was prepared exparte, or the like. It is clear that the plaintiff has already invested substantially higher amount, than the one stipulated, viz., as against

Rs.9 lakhs, he has spent more than Rs.16 lakhs.

In such circumstances, I do not find any sufficient ground to interfere with the impugned orders. The revision petition is, therefore, dismissed summarily. The needful be done as directed by learned District Judge within a period of six weeks from today.

In the totality of circumstances, it is further directed that if the needful is not done within six weeks from today, it will be open to the plaintiff-decree-holder to apply to learned trial Court for being awarded adequate compensation by way of mesne profits. The quantum should be commensurated to the loss, which the decree-holder is suffering, or had been suffering on account of non-vacating the premises.

The revision petition is, therefore, dismissed with the aforesaid directions.

(N P GUPTA),J.

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